

CR 2025/46 - Eumundi Group Limited - scheme of arrangement and interim dividend



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Status: **legally binding**

Class Ruling

Eumundi Group Limited – scheme of arrangement and interim dividend

❶ Relying on this Ruling

This publication is a public ruling for the purposes of the *Taxation Administration Act 1953*.

If this Ruling applies to you, and you correctly rely on it, we will apply the law to you in the way set out in this Ruling. That is, you will not pay any more tax or penalties or interest in respect of the matters covered by this Ruling.

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What this Ruling is about

1. This Ruling sets out the income tax consequences for the interim dividend paid by Eumundi Group Limited (Eumundi) on 13 January 2025 (Interim Dividend) and the scheme of arrangement whereby SEQ Hospitality Group Pty Ltd (SEQ) acquired all the ordinary shares in Eumundi on 14 February 2025 (Implementation Date).
2. Details of this scheme are set out in paragraphs 40 to 61 of this Ruling.
3. All legislative references in this Ruling are to the *Income Tax Assessment Act 1997*, unless otherwise indicated.

Who this Ruling applies to

4. This Ruling applies to you if you:
 - held your Eumundi shares on
 - 7 January 2025 (Interim Dividend Record Date) and received the Interim Dividend of \$0.024 per share, and
 - 7 February 2025 (Scheme Record Date) and participated in the scheme of arrangement under which SEQ acquired all the shares in Eumundi.
 - held your Eumundi shares on capital account – that is, your Eumundi shares were neither held as revenue assets (as defined in section 977-50) nor as trading stock (as defined in subsection 995-1(1)), and

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- were either a
 - ‘resident’ of Australia as defined in subsection 6(1) of the *Income Tax Assessment Act 1936* (ITAA 1936), or
 - ‘non-resident’ of Australia as defined in subsection 6(1) of the ITAA 1936 who does not carry on a business at or through a permanent establishment in Australia.

5. This Ruling does not apply to you if you:

- acquired your Eumundi shares pursuant to an employee share scheme to which Subdivision 83A-C applies and your deferred taxing point occurred on the Implementation Date
- are subject to the investment manager regime in Subdivision 842-I in relation to your Eumundi shares
- are a ‘temporary resident’ of Australia within the meaning of subsection 995-1(1), or
- are subject to the taxation of financial arrangement rules in Division 230 in relation to the scheme outlined in paragraphs 40 to 61 of this Ruling.

Note: Division 230 will not apply to individuals unless they have made an election for it to apply.

When this Ruling applies

6. This Ruling applies from 1 July 2024 to 30 June 2025.

Ruling

Interim Dividend

7. The Interim Dividend is a ‘dividend’ as defined in subsection 6(1) of the ITAA 1936.
8. The Interim Dividend is a frankable distribution under section 202-40.
9. The Interim Dividend is not a distribution to which subsection 207-159(1) applies.

Assessability of the Interim Dividend, franking credits and tax offsets

Resident shareholders

10. If you are a resident of Australia, you include the Interim Dividend in your assessable income (subparagraph 44(1)(a)(i) of the ITAA 1936).
11. If you satisfy the residency requirements in section 207-75, you include the franking credits attached to the Interim Dividend in your assessable income and you are entitled to a tax offset equal to the amount of those credits (sections 207-20), provided you are a ‘qualified person’ (as defined in Division 1A of former Part IIIAA of the ITAA 1936).
12. If you received the Interim Dividend as a trustee of a trust (not being a complying superannuation entity) or as a partnership and you are not a corporate tax entity, the franking credits on the Interim Dividend are included in your assessable income, provided you are a qualified person (subsection 207-35(1)).

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13. If you are a beneficiary of a trust or a partner in a partnership and the Interim Dividend flows indirectly through the trust or partnership to you, you include your share of the Interim Dividend in your assessable income. You are entitled to a tax offset equal to your share of the franking credits on the Interim Dividend, provided both you and the trust or partnership (as relevant) are each a qualified person (section 207-45 and former subsection 160APHU(1) of the ITAA 1936).

14. Your entitlement to the franking credit tax offset under Division 207 in relation to the Interim Dividend is subject to the refundable tax offset rules in Division 67, provided you are not excluded by the operation of section 67-25.

Qualified persons

15. You must be a qualified person in relation to a dividend in order to be entitled to a tax offset in respect of the franking credit on the dividend (subsection 207-145(1)).

16. As you have not made a related payment in respect of the Interim Dividend (former section 160APHN of the ITAA 1936), you are a qualified person in relation to the Interim Dividend if you satisfy the holding period rule in respect of the primary qualification period (paragraph 207-145(1)(a) and former paragraph 160APHO(1)(a) of the ITAA 1936).

17. The primary qualification period is the period beginning the day after the day on which you acquired your Eumundi shares and ending on the 45th day after the day on which the shares became ex dividend (former section 160APHD of the ITAA 1936).

18. A share becomes ex dividend on the day after the last day on which the acquisition by a person of the share will entitle the person to receive the dividend (former subsection 160APHE(1) of the ITAA 1936).

19. As your Eumundi shares became ex dividend on 8 January 2025, the primary qualification period ends on 22 February 2025.

20. The holding period rule requires you to hold your Eumundi shares at risk for a continuous period (not counting the day on which you acquired your Eumundi shares or the day you disposed of your Eumundi shares) of at least 45 days during the primary qualification period (former paragraph 160APHO(2)(a) of the ITAA 1936).

21. You no longer held your Eumundi shares at risk on the Scheme Record Date as that was the day you became committed to disposing your Eumundi shares. This means that the days on and after 7 February 2025 are excluded (former subsection 160APHO(3) of the ITAA 1936).

22. Accordingly, you will be a qualified person in relation to the Interim Dividend if you held your Eumundi shares at risk for a continuous period of at least 45 days¹ prior to 7 February 2025 (former paragraph 160APHO(2)(a) of the ITAA 1936).

23. You will not be a qualified person if you acquired your Eumundi shares on or after 25 December 2024, as you would have held your Eumundi shares for less than 45 days (former paragraph 160APHO(2)(a) of the ITAA 1936).

24. You will need to determine whether you satisfy the holding period rule having regard to your circumstances. This will require taking into account any positions entered into that result in you having 'materially diminished risks of loss or opportunities for gain' (as defined under former section 160APHM of the ITAA 1936) in respect of your Eumundi shares.

¹ This does not include the date on which your Eumundi shares were acquired or the day of disposal.

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25. The small shareholder exception in former section 160APHT(1) of the ITAA 1936 may apply. If you are an individual and you receive no more than \$5,000 in franking credits from dividends that you own directly or indirectly via a partnership or trust during the income year, then you are a qualified person in relation to the Interim Dividend.

Non-resident shareholders

26. If you are a non-resident, the Interim Dividend is not included in your assessable income (section 128D of the ITAA 1936) and you are not liable to withholding tax in respect of the Interim Dividend (paragraph 128B(3)(ga) of the ITAA 1936).

27. You do not include the amount of the franking credits attached to the Interim Dividend in your assessable income and you are not entitled to a tax offset for those franking credits (sections 207-20 and 207-70).

Exempting entity and former exempting entity

28. Eumundi was not an exempting entity (section 208-20) or a former exempting entity (section 208-50) at the time when the Interim Dividend was paid to you.

29. Section 208-195 will not apply to deny the inclusion in your assessable income of the amount the franking credit of the Interim Dividend you received or deny the franking credit tax offset to which you are otherwise entitled under Division 207 at the time when the Interim Dividend was paid to you.

Integrity rules in relation to franking credits and foreign income tax deduction

30. We will not make a determination to deny the whole, or any part, of the imputation benefits you received in relation to the Interim Dividend under:

- paragraph 177EA(5)(b) of the ITAA 1936 because the purpose condition in paragraph 177EA(3)(e) of the ITAA 1936 is not satisfied, and
- paragraph 204-30(3)(c) because there is no streaming of distributions.

31. Neither paragraph 207-145(1)(d) (about dividend stripping operations) nor paragraph 207-145(1)(da) (about dividend washing) will apply to deny the gross-up of your assessable income by the amount of the franking credit attached to the Interim Dividend, or to deny the tax offset to which you are otherwise entitled to under Division 207.

32. If you are entitled to a 'foreign income tax deduction' (as defined in section 832-120) in relation to the Interim Dividend, the amount of the franking credit attached to the Interim Dividend is not included in your assessable income and you will not be entitled to a tax offset under Division 207 (paragraphs 207-145(1)(db), (e) and (f)).

Capital gains tax consequences

CGT event A1

33. CGT event A1 happened to you on the Implementation Date when you disposed of your Eumundi shares to SEQ (section 104-10).

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Capital proceeds

34. The capital proceeds you received for each Eumundi share is \$1.62 per share (paragraph 116-20(1)(a)).

35. The Interim Dividend of \$0.024 for each Eumundi share is not included in the capital proceeds.

Capital gain or capital loss

36. You made a capital gain from CGT event A1 happening if the capital proceeds from the disposal of your Eumundi share exceeded its cost base (subsection 104-10(4)). The capital gain is the amount of the difference.

37. You made a capital loss from CGT event A1 happening if the capital proceeds from the disposal of your Eumundi share is less than its reduced cost base (subsection 104-10(4)). The capital loss is the amount of the difference.

38. If you were a foreign resident or the trustee of a foreign trust for CGT purposes (as defined in subsection 995-1(1)) just before the Implementation Date, you disregard any capital gain or capital loss you made as a result of CGT event A1 happening if your Eumundi shares were not taxable Australian property (section 855-10).

Discount capital gain

39. If you made a capital gain from the disposal of your Eumundi share, you are entitled to treat the capital gain as a 'discount capital gain' provided you are an individual, a complying superannuation entity or a trust (section 115-10) and acquired, or are taken to have acquired, your Eumundi share on or before 13 February 2024 and the conditions in Division 115 are satisfied (subsection 115-25(1)).

Scheme

40. The following description of the scheme is based on information provided by the applicant. If the scheme is not carried out as described, this Ruling cannot be relied upon.

41. Other information referenced is taken from the following documents released on the Australian Securities Exchange (ASX):

- Implementation Deed between SEQ and Eumundi dated 30 October 2024 (Implementation Deed), as varied by the First Deed of Variation to the Implementation Deed dated 29 November 2024 and the Second Deed of Variation to the Implementation Deed dated 16 December 2024.
- Bidder's Statement lodged with the Australian Securities and Investment Commission by SEQ dated 6 November 2024 and served on Eumundi on 11 November 2024 (Bidder's Statement), as varied by First Supplementary Bidder's Statement dated 12 December 2024 and Second Supplementary Bidder's Statement dated on 16 December 2024.
- Scheme Booklet dated 20 December 2024.

Status: **legally binding**

Background***Eumundi Group Limited***

42. Eumundi, a Queensland hotel and investment property company, was an Australian public company admitted to the official list of the ASX on 7 December 1989.

43. Eumundi is the holding company of the Eumundi group, which consists of Eumundi and 3 wholly owned subsidiaries, being Eumundi Group Hotels Pty Ltd, Eumundi Property Group Pty. Ltd. and Airlie Beach Lagoon Hotel Pty Ltd (collectively, the 'Eumundi Group').

44. As of 28 January 2025, Eumundi had 49,767,770 ordinary shares on issue and no other classes of shares or rights on issue.

SEQ Hospitality Group Pty Ltd

45. SEQ is an Australian proprietary company incorporated on 27 September 2024 as a special purpose vehicle to acquire Eumundi shares.

46. SEQ is a wholly owned subsidiary of SEQ Hospitality Group Holdings Pty Ltd (SEQ Holdings).

47. SEQ Holdings is, in turn, owned by entities associated with each of the SEQ Directors. SEQ and SEQ Holdings are a part of The Fortitudo Group, an independent hotel and liquor retail operator based in Southeast Queensland.

Scheme of arrangement

48. On 30 October 2024, Eumundi and SEQ entered into an Implementation Deed under which SEQ agreed to acquire all of the ordinary shares in Eumundi by way of a scheme of arrangement under Part 5.1 of the *Corporations Act 2001* (Corporations Act), subject to shareholder and court approval. The Implementation Deed also provided for the shares to be acquired by way of concurrent off-market takeover bid under Chapter 6 of the Corporations Act.

49. Under the terms of the Implementation Deed, the initial transaction consideration per share was \$1.55. On 13 December 2024, SEQ lodged a notice under section 650D of the Corporations Act with the Australian Securities and Investments Commission, notifying of the increased offer price in respect of the scheme of arrangement, resulting in a revised transaction consideration of \$1.62 per share. The cash consideration amount was \$1.62 (Scheme Consideration).

50. On 31 January 2025, the required majority of Eumundi's shareholders approved the scheme of arrangement.

51. On 4 February 2025, the Federal Court of Australia approved the scheme of arrangement and provided orders under Part 5.1 of the Corporations Act.

52. The shares in Eumundi were then suspended from quotation on the ASX from close of trading on 5 February 2025.

53. The off-market takeover bid was withdrawn at 5:00 pm (AEST) on 6 February 2025.

54. The transfer of Eumundi shares to SEQ under the scheme of arrangement occurred on 14 February 2025, with Eumundi then becoming a wholly owned subsidiary of SEQ.

55. The shares in Eumundi were delisted from the ASX official list at close of trading on 17 February 2025.

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Interim Dividend

56. On 24 December 2024, Eumundi announced the payment of a fully franked Interim Dividend of \$0.024 per share.

57. The Interim Dividend was paid to Eumundi shareholders who held Eumundi shares on the Interim Dividend Record Date. The Interim Dividend was paid on 13 January 2025.

58. The Interim Dividend was:

- paid from realised profits
- not funded, directly or indirectly, by SEQ or their associates, and
- compliant with the requirements of the Corporations Act, including section 254T of that Act.

59. No proceeds from an equity issue by SEQ or their associates have been or will be applied towards the repayment of any portion of the debt incurred to pay the Interim Dividend.

60. Neither SEQ or their associates had any influence or control over the determination and payment of the Interim Dividend. The decision to pay the Interim Dividend was entirely at the discretion of the Eumundi Board.

61. The payment of the Interim Dividend was not conditional on the scheme of arrangement becoming effective nor did it reduce the Scheme Consideration.

Commissioner of Taxation

9 July 2025

Status: **not legally binding**

References

Legislative references:

- ITAA 1936 6(1)
 - ITAA 1936 44(1)(a)(i)
 - ITAA 1936 128B(3)(ga)
 - ITAA 1936 128D
 - ITAA 1936 former Pt IIIAA Div 1A
 - ITAA 1936 former 160APHD
 - ITAA 1936 former 160APHE(1)
 - ITAA 1936 former 160APHM
 - ITAA 1936 former 160APHN
 - ITAA 1936 former 160APHO(1)(a)
 - ITAA 1936 former 160APHO(2)
 - ITAA 1936 former 160APHO(2)(a)
 - ITAA 1936 former 160APHO(3)
 - ITAA 1936 former 160APHT(1)
 - ITAA 1936 former 160APHU(1)
 - ITAA 1936 177EA(3)(e)
 - ITAA 1936 177EA(5)(b)
 - ITAA 1997 Div 67
 - ITAA 1997 67-25
 - ITAA 1997 83A-C
 - ITAA 1997 104-10
 - ITAA 1997 104-10(4)
 - ITAA 1997 Div 115
 - ITAA 1997 115-10
 - ITAA 1997 115-25(1)
 - ITAA 1997 116-20(1)(a)
 - ITAA 1997 202-40
 - ITAA 1997 204-30(3)(c)
 - ITAA 1997 Div 207
 - ITAA 1997 207-20
 - ITAA 1997 207-35(1)
 - ITAA 1997 207-45
 - ITAA 1997 207-70
 - ITAA 1997 207-75
 - ITAA 1997 207-145(1)
 - ITAA 1997 207-145(1)(a)
 - ITAA 1997 207-145(1)(d)
 - ITAA 1997 207-145(1)(da)
 - ITAA 1997 207-145(1)(db)
 - ITAA 1997 207-145(1)(e)
 - ITAA 1997 207-145(1)(f)
 - ITAA 1997 207-159(1)
 - ITAA 1997 208-20
 - ITAA 1997 208-50
 - ITAA 1997 208-195
 - ITAA 1997 Div 230
 - ITAA 1997 832-120
 - ITAA 1997 Subdiv 842-I
 - ITAA 1997 855-10
 - ITAA 1997 977-50
 - ITAA 1997 995-1(1)
 - Corporations Act 2001 Pt 5.1
 - Corporations Act 2001 254T
 - Corporations Act 2001 650D
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ATO references

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